

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SISSY MCCONNON, on behalf of
herself and all others similarly
situated,

Plaintiff,

V.

THE KROGER CO. a corporation;
and DOES 1 through 10, inclusive,

Defendant.

Case No. 2:24-cv-02601-SB-E

STIPULATED PROTECTIVE ORDER

DISCOVERY MATTER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth
2 in Section 12.3 below, that this Stipulated Protective Order does not entitle them to
3 file confidential information under seal; Local Civil Rule 79-5 sets forth the
4 procedures that must be followed and the standards that will be applied when a party
5 seeks permission from the court to file material under seal.

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8 **B. GOOD CAUSE STATEMENT**

9 This action is likely to involve trade secrets, customer and pricing lists
10 and other valuable research, development, commercial, financial, technical and/or
11 proprietary information for which special protection from public disclosure and
12 from use for any purpose other than prosecution of this action is warranted. Such
13 confidential and proprietary materials and information consist of, among other
14 things, confidential business or financial information, information regarding
15 confidential business practices, or other confidential research, development, or
16 commercial information (including information implicating privacy rights of third
17 parties), information otherwise generally unavailable to the public, or which may be
18 privileged or otherwise protected from disclosure under state or federal statutes,
19 court rules, case decisions, or common law. Accordingly, to expedite the flow of
20 information, to facilitate the prompt resolution of disputes over confidentiality of
21 discovery materials, to adequately protect information the parties are entitled to keep
22 confidential, to ensure that the parties are permitted reasonable necessary uses of
23 such material in preparation for and in the conduct of trial, to address their handling
24 at the end of the litigation, and serve the ends of justice, a protective order for such
25 information is justified in this matter. It is the intent of the parties that information
26 will not be designated as confidential for tactical reasons and that nothing be so
27 designated without a good faith belief that it has been maintained in a confidential,

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1 non-public manner, and there is good cause why it should not be part of the public
2 record of this case.

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4 2. DEFINITIONS

5 2.1 Action: *McConnon v. The Kroger Co.*, Case No. 2:24-cv-02601-SB-E.

6 2.2 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

17 2.6 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things) that are produced or
20 generated in disclosures or responses to discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as
23 an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this Action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association or

1 other legal entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a
3 party to this Action but are retained to represent or advise a party to this Action and
4 have appeared in this Action on behalf of that party or are affiliated with a law firm
5 that has appeared on behalf of that party, and includes support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

20 | 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (*e.g.*, paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix at a minimum, the legend
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
12 contains protected material. If only a portion of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (*e.g.*, by making appropriate markings in the margins).

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
20 documents it wants copied and produced, the Producing Party must determine which
21 documents, or portions thereof, qualify for protection under this Order. Then,
22 before producing the specified documents, the Producing Party must affix the
23 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
24 portion of the material on a page qualifies for protection, the Producing Party also
25 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
26 in the margins).

27 (b) for testimony given in depositions that the Designating Party identifies

1 the Disclosure or Discovery Material on the record, before the close of the
2 deposition all protected testimony.

3 (c) for information produced in some form other than documentary and
4 for any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information is stored the
6 legend “CONFIDENTIAL.” If only a portion or portions of the information
7 warrants protection, the Producing Party, to the extent practicable, shall identify the
8 protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

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16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37 et seq as modified by any order entered in
22 the Action.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
26 parties) may expose the Challenging Party to sanctions. Unless the Designating
27 Party has waived or withdrawn the confidentiality designation, all parties shall

continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party and the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional

Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the
2 subpoena or order is subject to this Protective Order. Such notification shall include
3 a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with
7 the subpoena or court order shall not produce any information designated in this
8 action as “CONFIDENTIAL” before a determination by the court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s
10 permission. The Designating Party shall bear the burden and expense of seeking
11 protection in that court of its confidential material and nothing in these provisions
12 should be construed as authorizing or encouraging a Receiving Party in this Action
13 to disobey a lawful directive from another court.

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15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party
27 that some or all of the information requested is subject to a confidentiality

1 agreement with a Non-Party;

2
3 (2) promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this Action, the relevant discovery request(s), and a reasonably
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the
7 Non-Party, if requested.

8 (c) If the Non-Party fails to seek a protective order from this court within
9 14 days of receiving the notice and accompanying information, the Receiving Party
10 may produce the Non-Party's confidential information responsive to the discovery
11 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
12 not produce any information in its possession or control that is subject to the
13 confidentiality agreement with the Non-Party before a determination by the court.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and
15 expense of seeking protection in this court of its Protected Material.

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17 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
22 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A.

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27 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**

1 PROTECTED MATERIAL

2 When a Producing Party gives notice to Receiving Parties that certain
3 inadvertently produced material is subject to a claim of privilege or other protection,
4 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
5 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
6 procedure may be established in an e-discovery order that provides for production
7 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
8 (e), insofar as the parties reach an agreement on the effect of disclosure of a
9 communication or information covered by the attorney-client privilege or work
10 product protection, the parties may incorporate their agreement in the stipulated
11 protective order submitted to the court.

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13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any
20 ground to use in evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Local Civil Rule 79-5. Protected Material
23 may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. If a Party's request to file Protected Material
25 under seal is denied by the court, then the Receiving Party may file the information
26 in the public record unless otherwise instructed by the court.

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1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in
5 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving
8 Party must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned or
11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing any
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4 (DURATION).

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21 14. VIOLATION

22 Any violation of this Order may be punished by any and all appropriate measures
23 including, without limitation, contempt proceedings and/or monetary sanctions.

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26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 Dated: May 28, 2024

THE WAND LAW FIRM, P.C.

2
3 /s/ Aubry Wand
4 Aubry Wand

5 **FARUQI & FARUQI LLP**

6 Lisa T. Omoto

7 *Attorneys for Plaintiff and the Putative Class*

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9 Dated: May 28, 2024

DAVIS WRIGHT TREMAINE LLP

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11 /s/ Jacob M. Harper
12 Jacob M. Harper
13 Heather F. Canner

14 *Attorneys for Defendant The Kroger Co.*

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17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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19 DATED: 5/28/24

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23 Honorable Charles F. Eick
24 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *McConnon v. The Kroger Co.*, Case No. 2:24-cv-02601-SB-E. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

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1 Date: _____

2 City and State where sworn and signed: _____

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4 Printed name: _____

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6 Signature: _____

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